

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ISRAEL MARTINEZ-RODRIGUEZ,

Defendant.

2:08-cr-093-JCM-RJJ

REPORT & RECOMMENDATION  
OF UNITED STATES  
MAGISTRATE JUDGE  
(Motion to Dismiss - #25)

This matter is before the undersigned Magistrate Judge on Defendant's Motion to Dismiss Based on a Prior Unlawful Deportation (#25).

The Court having reviewed the Motion (#25) and the file herein finds that:

1. Defendant's Motion to Dismiss Based on a Prior Unlawful Deportation (#25) was filed on November 3, 2008.
2. Responsive pleadings were to be filed on or before November 15, 2008. *See*, Order on Stipulation (#24).
3. Plaintiff has filed no response to the Motion to Dismiss (#25).
4. LCR 47-9 states in part "...The failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion."

Based on the foregoing and good cause appearing therefore,

**RECOMMENDATION**

IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that Defendant's Motion to Dismiss Based on a Prior Unlawful Deportation (#25) be **GRANTED**.

**NOTICE**

Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 5<sup>th</sup> day of January, 2009.

  
ROBERT J. JOHNSTON  
United States Magistrate Judge